

## HOUSE BILL NO. 118

INTRODUCED BY G. CLANCY

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CLEAN AIR ACT OF MONTANA; ALLOWING THE SMALL BUSINESS STATIONARY SOURCE REPRESENTATIVE TO BE LOCATED WITHIN A NONREGULATORY PROGRAM OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; LIMITING THE PURPOSES FOR WHICH THE DEPARTMENT MAY USE INFORMATION OBTAINED BY THE SMALL BUSINESS STATIONARY SOURCE REPRESENTATIVE; REMOVING A REQUIREMENT THAT THE DEPARTMENT ACT ON OPERATING PERMIT APPLICATIONS BY NOVEMBER 15, 1997; AMENDING SECTIONS 75-2-109 AND 75-2-218, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 75-2-109, MCA, is amended to read:

**"75-2-109. Small business stationary source representative -- duties.** (1) The department shall establish a small business stationary source representative position that is not located in a regulatory program of the department ~~or~~ and not subject to ~~the~~ direct supervision ~~of~~ by a regulatory program of the department.

(2) The small business stationary source representative shall represent the interests of small business stationary sources before the department and other appropriate local, state, and federal agencies concerning the implementation and application of the requirements of this chapter. In addition, the representative shall provide assistance to small business stationary sources in meeting the requirements of this chapter. In carrying out these activities, the representative shall:

(a) monitor the activities of the small business stationary source technical and environmental compliance assistance program;

(b) review and provide comments and recommendations to the department, local air pollution control programs, and the appropriate federal agencies regarding the development and implementation of regulations pertaining to air quality that impact small business stationary sources;

(c) facilitate and promote the participation of small business stationary sources in the development

1 of new regulations pertaining to air quality that impact small business stationary sources;

2 (d) assist in the preparation and dissemination of reports and other information regarding the  
3 applicability of the requirements of this chapter to small business stationary sources;

4 (e) assist in the preparation of guideline documents by the small business stationary source  
5 technical and environmental compliance assistance program to ensure that these documents are readily  
6 understandable by the lay person;

7 (f) assist small business stationary sources and their trade associations to encourage voluntary  
8 compliance with the requirements of this chapter;

9 (g) cooperate with appropriate local, state, and federal agencies and private sector financial  
10 institutions to assist small business stationary sources in locating financial assistance necessary for  
11 compliance with the requirements of this chapter;

12 (h) consult with the small business compliance assistance advisory council regarding problems  
13 faced by small business stationary sources concerning the implementation and application of the  
14 requirements of this chapter; and

15 (i) perform other duties as may be necessary to meet the requirements of the federal Clean Air  
16 Act, 42 U.S.C. 7401, et seq.

17 ~~—— (3) THE SUBJECT TO ARTICLE II, SECTION 9, OF THE MONTANA CONSTITUTION, THE SMALL BUSINESS~~  
18 ~~STATIONARY SOURCE REPRESENTATIVE MAY NOT PROVIDE INFORMATION THAT THE REPRESENTATIVE OBTAINS FROM A~~  
19 ~~SMALL BUSINESS STATIONARY SOURCE TO THE DEPARTMENT FOR USE IN ANY ADMINISTRATIVE OR JUDICIAL ACTION TO~~  
20 ~~ENFORCE THE REQUIREMENTS OF THIS CHAPTER, UNLESS THE INFORMATION DISCLOSES A VIOLATION THAT CONSTITUTES~~  
21 ~~AN IMMINENT AND SUBSTANTIAL DANGER TO HUMAN HEALTH, SAFETY, OR THE ENVIRONMENT.~~

22 (3) SUBJECT TO ARTICLE II, SECTION 9, OF THE MONTANA CONSTITUTION, THE SMALL BUSINESS STATIONARY  
23 SOURCE REPRESENTATIVE MAY NOT PROVIDE INFORMATION THAT THE REPRESENTATIVE OBTAINS FROM A SMALL BUSINESS  
24 STATIONARY SOURCE TO THE DEPARTMENT FOR USE IN ANY ADMINISTRATIVE OR JUDICIAL ACTION TO ENFORCE THE  
25 REQUIREMENTS OF THIS CHAPTER, UNLESS THE INFORMATION DISCLOSES A VIOLATION THAT CONSTITUTES AN IMMINENT  
26 AND SUBSTANTIAL DANGER TO HUMAN HEALTH, SAFETY, OR THE ENVIRONMENT."

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28 **Section 2.** Section 75-2-218, MCA, is amended to read:

29 **"75-2-218. Permits for operation -- application completeness -- action by department -- application**  
30 **shield -- review by board.** (1) An application for an operating permit or renewal is not considered filed until

1 the department has determined that it is complete. An application is complete if all fees required under  
2 75-2-220 and all information and completed application forms required under 75-2-217 have been  
3 submitted. A complete application must contain all of the information required for the department to begin  
4 processing the application. If the department fails to notify the applicant in writing within 60 days after  
5 submittal of an application that the application is incomplete and fails to list the reasons why the  
6 application is considered incomplete, the application is considered filed on the date of the department's  
7 receipt of the application. The department may request additional information after a completeness  
8 determination has been made. The department shall adopt rules that contain criteria for use in determining  
9 both when an application is complete and when additional information is required after a completeness  
10 determination has been made.

11 (2) Except as provided in subsection (3), the department shall, consistent with the procedures  
12 established under 75-2-217, approve or disapprove a complete application for an operating permit or  
13 renewal and shall issue or deny the permit or renewal within 18 months after the date of filing. Failure of  
14 the department to act in a timely manner does not constitute approval or denial of the application. This  
15 does not limit or abridge the right of any person to seek available judicial remedies to require the  
16 department to act in a timely manner.

17 (3) The board may by rule provide for a transition schedule for both the submittal to the  
18 department of initial applications for operating permits by existing sources and action by the department  
19 on these initial permit applications. The board may require that one-third of all operating permit applications  
20 required for existing sources be submitted within the first calendar year after the adoption of rules  
21 implementing an operating permit program under 75-2-217. ~~Any transition schedule for action by the~~  
22 ~~department must ensure that all permit applications required under 75-2-217 and this subsection for~~  
23 ~~existing sources will be acted upon by the department before November 15, 1997.~~

24 (4) If an applicant submits a timely and complete application for an operating permit, the  
25 applicant's failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits  
26 a timely and complete application for an operating permit renewal, the expiration of the applicant's existing  
27 operating permit is not a violation of 75-2-217. The applicant shall continue to be subject to the terms and  
28 conditions of the expired operating permit until the operating permit is renewed and is subject to the  
29 application of 75-2-217. The applicant is not entitled to the protection of this subsection if the delay in  
30 final action by the department on the application results from the applicant's failure to submit in a timely

1 manner information requested by the department to process the application.

2 (5) Except as provided in subsection (8), if the department approves or denies an application for  
3 an operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this  
4 section, any person that participated in the public comment process required under 75-2-217(7) may  
5 request a hearing before the board. The request for a hearing must be filed within 30 days after the  
6 department renders its decision and must include an affidavit setting forth the grounds for the request. The  
7 contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply  
8 to a hearing before the board under this subsection.

9 (6) Except as provided in subsection (8), the department's decision on any application is not final  
10 until 30 days have elapsed from the date of the decision and there is no request for a hearing under this  
11 section. The filing of a request for a hearing postpones the effective date of the department's decision until  
12 the conclusion of the hearing and issuance of a final decision by the board.

13 (7) The requirements of subsections (5) and (6) apply to any action initiated by the department  
14 to suspend, revoke, modify, or amend an operating permit issued under this section.

15 (8) The denial by the department of an application under 75-2-217 and this section is not subject  
16 to review by the board or judicial review if the basis for denial is the written objection of the appropriate  
17 federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

18 (9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is  
19 considered to be in compliance with the requirements of this chapter only if the permit expressly includes  
20 those requirements or an express determination that those requirements are not applicable. This subsection  
21 does not apply to general permits provided for under 75-2-217."

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23 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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